

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

UNITED STATES OF AMERICA <i>ex rel.</i>)	
JEFFREY H. LIEBMAN and DAVID M.)	
STERN, M.D.,)	Case No.: 3:17-cv-00902
)	
Plaintiff-Relators,)	JUDGE CAMPBELL
)	MAGISTRATE JUDGE HOLMES
v.)	
)	
METHODIST LE BONHEUR HEALTHCARE)	
and METHODIST HEALTHCARE-MEMPHIS)	
HOSPITALS,)	
)	
Defendants.)	
_____)	

DECLARATION OF MICHAEL J. PETRON, CPA, CFE

I, Michael J. Petron, declare under penalty of perjury that the following statements are true and correct:

I. INTRODUCTION

1. I am a Managing Director with Stout Risius Ross, LLC (“Stout”). Stout is a global investment bank and advisory firm specializing in corporate finance, valuation, financial disputes, and investigations. I am a Certified Public Accountant licensed in the Commonwealth of Virginia and a Certified Fraud Examiner. My business address is 1015 15th Street NW, Suite 1050, Washington, DC 20005.

II. ASSIGNMENT

2. I was asked by the United States Attorney’s Office for the Middle District of Tennessee (“USAO”) to summarize Medicare payments related to alleged violations to the Anti-Kickback Statute (“AKS”) by defendants Methodist Le Bonheur Healthcare and Methodist Healthcare-Memphis Hospitals (collectively, “Methodist” or “Defendants”). It is my

understanding that these Medicare payments cover the approximate time period January 1, 2012 to December 31, 2018 (“Deal Period”) when the West Clinic, P.C. n/k/a The West Clinic, PLLC (“West”) had an affiliation with Methodist.¹ I was also asked to identify and summarize any billing patterns present between Medicare payments to Methodist with the West providers as the attending physicians versus Medicare payments to Baptist Memorial Hospital (“Baptist”) with the West providers as the attending physicians during and surrounding the Deal Period. The summaries below include only paid amounts to Methodist and not to Baptist. The Baptist data is only used as a comparison over time to Methodist.

III. DATA AND OTHER INFORMATION REVIEWED AND CONSIDERED

3. In creating the calculations and summary charts outlined below, I have reviewed and considered the documents and data that I requested or that Counsel has made available to me. A list of such documents and data is set forth in **Exhibit 1**. Under my supervision, other Stout personnel have assisted me with the review and summary of the information.
4. To summarize the Medicare payments related to the alleged AKS violations and to perform calculations, I examined several data files provided to me by Counsel and created summary charts of the data. I received six files that contained Medicare Part A inpatient and outpatient data for Methodist.² The data was obtained using the Billing Provider “1558365890” where the attending physician was one of the 86 West providers previously

¹ I understand that the deal officially ended during February 2019, but for purposes of making annual comparisons, I used an end date of December 31, 2018 in my computations for this declaration.

² 3308162021009 METHODIST HEALTHCARE - MEMPHIS HOSPITALS 2011-2012.xlsx, 3308162021009 METHODIST HEALTHCARE - MEMPHIS HOSPITALS 2013-2014, 3308162021009 METHODIST HEALTHCARE - MEMPHIS HOSPITALS 2015-2016.xlsx, 3308162021009 METHODIST HEALTHCARE - MEMPHIS HOSPITALS 2017.xlsx, 3308162021009 METHODIST HEALTHCARE - MEMPHIS HOSPITALS 2018.xlsx, and 3308162021009 METHODIST HEALTHCARE - MEMPHIS HOSPITALS 2019-2021.xlsx.

identified by Counsel.³ This is the same data set that I previously discussed in my deposition in this case. I also reviewed one file that contained Medicare Part A inpatient and outpatient data for Baptist using the Billing Provider “1578527172” where the attending physician was one of the 91 West providers previously identified by Counsel.⁴

5. The charts and exhibits below are true and accurate summaries of the data provided to me.

IV. POSSIBLE REVISIONS TO THIS DECLARATION

6. The summaries and calculations herein are based on the information made available to me as of the date of this declaration. I reserve the right to review any information produced by any party and to update this declaration as necessary to reflect any additional analysis. In addition, I may create additional exhibits, charts, summaries, or other demonstrative materials that may be used at points during this proceeding.

V. SUMMARY CHARTS

7. The data provided to me was voluminous, containing seven different files that included a total of 1,951,706 claim lines for the Methodist data and 207,258 claims lines for the Baptist data.
8. I summarized the Methodist data I received, and the Medicare total paid amounts were \$88,060,484 and \$338,654,187 for inpatient and outpatient services, respectively. These Medicare paid amounts during the Deal Period were \$71,203,599 for inpatient services and \$322,395,170 for outpatient services.⁵
9. I limited the Methodist data to cover only the dates of service for which the 86 West

³ In total there were 91 West providers identified by the Defendants, but only 86 were present in the data provided.

⁴ 3310132021013 BAPTIST MEMORIAL HOSPITAL - Part A.xlsx

⁵ These numbers were included in the United States’ Supplemental Initial Disclosures dated September 17, 2022 and shown in the corresponding Exhibits GOV000891-GOV000896.

providers were employed by West.⁶ These dates are provided in **Exhibit 2**. Those Medicare paid amounts were \$74,910,272 for inpatient services, and \$328,294,408 for outpatient services; or, \$58,816,954 and \$314,485,565 for inpatient and outpatient services during the Deal Period, respectively. **Chart 1** below summarizes this information by year.

Chart 1: Medicare Payments to Methodist Over Time⁷

Year of Service	Inpatient Services (Paid \$)	Outpatient Services (Paid \$)
2011	\$ 4,577,829	\$ 2,031,884
2012	6,573,819	27,873,893
2013	7,951,933	32,297,912
2014	7,753,749	38,902,203
2015	8,304,512	43,378,029
2016	8,270,648	53,038,065
2017	10,159,369	63,593,343
2018	9,802,924	55,402,119
2019	8,067,027	9,619,881
2020	2,752,857	1,551,188
2021	695,605	605,890
Total	\$ 74,910,272	\$ 328,294,408
Deal Period	\$ 58,816,954	\$ 314,485,565

INPATIENT CLAIMS

10. I examined the West providers' Medicare inpatient billings at Methodist compared to the West providers' Medicare inpatient billings at Baptist.
11. I categorized each provider into one of four groups (Groups A-D):
 - i. Group A contains providers that showed an increase in the number of beneficiaries serviced at Methodist from 2011 through the Deal Period while simultaneously showing a decrease in the number of beneficiaries serviced at Baptist over the same period.

⁶ File "West Clinic - Enrollment Dates.xlsx" provided by Counsel shows the West enrollment dates for each provider.

⁷ The dates of service covered are January 1, 2011 to July 30, 2021.

- ii. Group B contains providers that showed an increase in the number of beneficiaries serviced at Methodist from 2011 through the Deal Period and a minimal change in the number of beneficiaries serviced at Baptist over the same period.
 - iii. Group C contains providers that started their employment with West during the Deal Period and serviced all or almost all patients at Methodist as compared to Baptist.
 - iv. Group D contains all remaining providers that had either a minimal number of beneficiaries serviced during the Deal Period, or did not meet the criteria for Groups A, B or C.
12. **Exhibit 3** shows three things: (1) it summarizes the 46 West providers' total payments for inpatient claims during the Deal Period,⁸ (2) it summarizes the number of beneficiaries, over time, for the West providers at Methodist and Baptist,⁹ and lastly (3) the Group into which I classified each provider.
13. **Chart 2 below** is a snapshot of **Exhibit 3** that shows West provider Mark Reed (NPI #1477585347).

⁸ There are 51 unique West providers listed, but only 46 of them had at least one paid claim during the Deal Period.

⁹ For a beneficiary to be counted, there had to be at least one paid claim for that particular year. Beneficiaries that have a claim in multiple years are counted in each year.

Chart 2 – Snapshot of Inpatient Claims for West Provider Mark Reed

Mark Reed (NPI #1477585347, Employed at West starting March 14, 2006)			
Year	Methodist Total Paid	Number of Beneficiaries at Methodist	Number of Beneficiaries at Baptist
2011	\$ 14,361	2	85
2012	73,589	9	86
2013	150,236	14	63
2014	356,697	27	21
2015	283,421	21	15
2016	303,276	25	31
2017	376,383	36	11
2018	426,332	46	1
2019	549,852	44	2
2020	426,671	42	1
2021	282,996	21	1
Total	\$ 3,243,813		
Deal Period	\$ 1,969,934		

14. Mark Reed is classified as Group A since the number of beneficiaries he saw at Methodist steadily increased from 2 in 2011 to a high of 46 beneficiaries in 2018 while the number of beneficiaries at Baptist steadily decreased from 85 and 86 beneficiaries in 2011 and 2012, respectively, to only one beneficiary by 2018. The total paid to Methodist for inpatient services in which Dr. Mark Reed was the attending physician for the Deal Period was \$1,969,934.
15. **Chart 3** below summarizes, by Group, the Medicare total paid to Methodist for inpatient services from the West providers, for dates in which the West providers were employed by West during the Deal Period.

Chart 3 – Summary of Methodist Inpatient Totals by Group¹⁰

Methodist Inpatient Claims			
Group	Number of Physicians	Number of Beneficiaries	Total Paid
A	8	1,401	\$ 21,573,431
B	3	588	9,295,683
C	10	888	11,407,222
D	25	1,258	16,540,618
Deal Period	46	3,657	\$ 58,816,954

16. Group A contains eight providers with a total Medicare paid amount of \$21,573,431 for 1,401 beneficiaries at Methodist during the Deal Period, and Group B contains three providers with a total Medicare paid amount of \$9,295,683 for 588 beneficiaries at Methodist during the Deal Period.

OUTPATIENT CLAIMS

17. I also examined the West providers' Medicare outpatient billings at Methodist over time compared to the West providers' Medicare outpatient billings at Baptist.
18. **Exhibit 4** summarizes the West providers' total payments for outpatient claims during the Deal Period,¹¹ and the number of outpatient beneficiaries, over time, for the West providers at Methodist and Baptist.¹²
19. **Chart 4 below** is a snapshot of **Exhibit 4** that shows West provider Lee Schwartzberg (NPI # 1306878228).

¹⁰ The number of beneficiaries listed in the chart is not necessarily the same as the sum of the beneficiaries separated by provider as shown in Exhibit 3 as some beneficiaries counted had multiple services from different providers or in multiple years in the same time period.

¹¹ The 73 West providers listed out of the total of 86 had at least one paid claim during the Deal Period.

¹² For a beneficiary to be counted, there had to be at least one paid claim for that particular year. Beneficiaries that have a claim in multiple years are counted in each year.

Chart 4 – Snapshot of Outpatient Claims for West Provider Lee Schwartzberg

Lee Schwartzberg

(NPI #1306878228, Employed at West starting September 1, 1993)

Year	Methodist Total Paid	Number of Beneficiaries at Methodist	Number of Beneficiaries at Baptist
2011	\$ 168,133	40	100
2012	2,296,096	310	125
2013	2,397,085	310	121
2014	2,546,794	310	90
2015	2,073,057	304	78
2016	2,144,019	323	73
2017	2,702,501	641	62
2018	1,647,977	635	46
2019	259,101	234	37
2020	9,690	37	18
2021	1,743	8	12
Total	\$ 16,246,196		
Deal Period	\$ 15,807,530		

20. The number of beneficiaries for West provider Lee Schwartzberg increased from 311 beneficiaries, on average, from 2012 to 2016 to a high of 641 beneficiaries in 2017 and 635 in 2018 while the number of beneficiaries at Baptist steadily dropped from 125 in 2012 to 46 beneficiaries by 2018. The total paid to Methodist for outpatient services in which Lee Schwartzberg was the attending physician for the Deal Period was \$15,807,530.
21. The above summary charts and calculations are true and accurate summaries of the data I examined.

VI. PROFESSIONAL FEE ARRANGEMENT

22. Stout is compensated by Counsel for my time at an hourly billing rate of \$265 per hour plus out-of-pocket expenses for services performed in this matter. Stout's compensation is in no way dependent on the analysis I express or on the outcome of this litigation. The calculations and summary charts in this declaration has been performed by me or by individuals working under my direction and supervision.

Dated, this 19th day of May, 2023

A handwritten signature in black ink, appearing to read "Michael J. Petron", written in a cursive style.

Michael J. Petron

CERTIFICATE OF SERVICE

I hereby certify that on May 19, 2023, a true and correct copy of the foregoing was served via email to the following:

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s/ Ellen Bowden McIntyre _____
ELLEN BOWDEN MCINTYRE
Assistant United States Attorney